



**Town of Arlington
Zoning Board of Appeals**

Meeting Minutes
Tuesday, March 29 , 2016
7:45 PM

Present: Pamela Heidell, Chair , Roger DuPont, Walter Fey, Christian Klein, and Suzanne Spinney
Also Present: Patrick Quinn and Joseph Moen

1. Docket #3499 85 Robbins Road

The Petitioner Stuart J. Landucci applied for a Special Permit under Article 9, Nonconforming Uses, Structures and Lots of the Zoning Bylaw for the Town of Arlington, seeking permission to construct a single family residential dwelling on a lot where there had been a pre-existing residential building. The lot is located in an R-1 zoning district and is 4,725 square feet. A pre-existing residential dwelling was built in the late 1890s and was legally non-conforming with respect to lot size, frontage, and side yard setback, which are less than the current By-law's dimensional requirements. Arlington Inspectional Services issued a Building Permit for an as-of-right for renovation to the pre-existing residential structure. In its Special Permit application, the Applicant stated that the contractor had intended to renovate the pre-existing structure by taking the physical characteristics of the building down to 50% of its size, but during construction it became necessary to take the pre-existing structure all the way down because of the unsafe condition of the structure when taken down to 50%. The removal of the structure down to the foundation was beyond the scope of the Building Permit issued by Inspectional Services. Inspectional Services ordered work to cease and issued financial penalties for non-compliance. The Building Inspector determined that an application for Special Permit should be heard by the Zoning Board of Appeals. It is the position of the Board that the prior legal nonconforming status of the property remains even though the pre-existing building being taken down to its foundation. Under MGL Chapter 40A [Zoning,] Section 6, a special permit granting authority has the right to exercise jurisdiction over prior non-conforming lots. The broad jurisdiction of Chapter 40A is considered in concert with the Arlington Zoning By-law and specifically, Section 9.02 D, Extension and Alteration of a non-conforming structure and Section 9.09, Unsafe Structures. The Plans submitted indicated that the existing front yard depth is conforming at 25 feet and would remain 25 feet, the existing rear yard depth is conforming at 32.58 feet and would be reduced to 25.58 but would remain conforming, the existing right yard depth is conforming at 11.83 feet and would remain 11.83 feet,

and the existing left side yard width is legally nonconforming at 8.33 feet and would not be decreased. The lot size is 4,725 square feet and frontage is 52.6 feet: both are legally non-conforming. The Plans indicate that within the footprint of the pre-existing structure, a second story with dormers would be added and the garage would be expanded. A two-story rear addition would be added, and the addition would be within the required setbacks of the current zoning Bylaw. The proposed alteration would increase the existing gross floor area from 1,404 square feet to 2,814 square feet; of this 744 square feet are outside the foundation of the pre-existing building. The Board found that the extension of the structure to the rear of the lot would not be substantially more detrimental to the neighborhood than the existing conforming structure, and would be in harmony with other structures in the neighborhood. An abutter spoke in favor of the project noting concern with the present status of the property, and another abutter indicated her only concern was that the height of the new structure not impede the performance of her solar cells on the roof. A third abutter requested that the unsafe condition of the lot be corrected immediately. At the close of the hearing the board unanimously approved their request for a special permit with special conditions.

SO VOTED: 5-0

2. Docket #34500 38-40 River Street

Grenham Gavin appeared before the Board with his attorney Robert Annese. Attorney Annese acknowledged that prior to the hearing, there had been correspondence and revisions to the attic plan to reduce the size of the dormer. He also provided additional background, noting that the lot had frontage on two streets and was an existing non-conforming lot, like many others in the neighborhood. Gavin/Annese also clarified that building permits had already been issued for work excepting a dormer addition in the attic which required the Board's approval under Section 9.02. The proposed dormer addition is depicted in a revised plan dated December 2, 2015, and includes a master bedroom, walk-in closet and bathroom. It was noted that many homes in the neighborhood had dormers. Attorney Annese stated that the proposed dormer requires a Special Permit in accordance with the provisions of 9.02 (d) for the reason that the construction will not comply with the Open Space requirements contained within the provisions of Arlington Zoning Bylaw. The Board discussed that the proposed alteration/dormer addition would be completely within the existing foundation walls and that the existing structure and lot are non-conforming as regards usable open space. Pursuant to the Zoning Bylaw, open space must be free of automotive traffic and parking and shall be deemed usable only if (1) at least 75 percent of the area has a grade of less than 8 percent and (2) no horizontal dimension is less than 25 feet. The existing open space on the property has no area that is at least 25 feet by 25 feet. Under existing conditions, the structure is non-conforming with regard to the Usable Open Space as a percentage of Gross Floor Area because there is no Open Space on the lot that meets the Bylaw's definition of Usable Open Space, and therefore the Usable Open Space as a Percentage of Gross Floor Area is zero, and would remain zero with the dormer addition. The Plans submitted indicated that the existing front yard depth is nonconforming at 14.8 feet and would remain 14.8 feet, the existing left side yard width is 10 feet and would remain 10 feet, the existing right side yard width is nonconforming at 9.6 feet and would remain 9.6 feet, and the existing rear yard depth is

nonconforming at 18.3 feet and would remain 18.3 feet. The addition of the dormer would not alter the footprint of the existing two family dwelling and would not change the amount of land available to meet the open space requirements of the property. At the close of the hearing the board unanimously approved their request for a special permit with special conditions.

SO VOTED: 5-0

3. Discussion of recent land court proceedings regarding the interpretation of zoning bylaws and of non-conforming structures.